IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 537 of 1994

with

CRIMINAL APPEAL No 674 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GAMJIBHAI CHANDUBHAI NAYAK
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 537 of 1994
MS BANNA S DUTTA for Petitioner No. 1
Mr.A.J.Desai learned A.P.P.for Respondent No. 1
2. Criminal Appeal No. 674 of 1994
MS BANNA S DUTTA for Petitioner No. 1
Mr.A.J.Desai, learned A.P.P.for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 05/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant Gamjibhai Chandubhai Nayak (original accused no. 2) and appellant Pratapbhai Gamjibhai Nayak (original accused no. 1) of Sessions Case no. 81/93 by filing the above numbered appeals under Sec. 374(2) of the Criminal Procedure Code have challenged their conviction under Sec. 302 read with Sec. 114 and under Sec. 307 of the Indian Penal Code and sentence imposed on each of them for rigorous imprisonment for life for offences under sec. 302 read with Sec. 114 of the Indian Penal Code and fine of Rs.100/- in default rigorous imprisonment for 10 days and for the offence under Sec. 307 rigorous imprisonment for 7 years and fine of Rs.500/- in default rigorous imprisonment for 2 months.

2. As the common questions of facts and law arise in both the appeals and as both the appeals arise from one Sessions Case and out of one incident, they are disposed of by this common judgment.

3. The brief facts of the prosecution case are summarized as under :

P.W. 2 Bhurabhai Dhulabhai along with his father Dhulabhai Vechatbhai (since deceased) and his brothers Rameshbhai Dhulabhai and p.w. 5 Harishbhai Dhulabhai were residing together at village Dhinkwa, taluka Halol, District Panchmahal. The appellant Gamjibhai Chandubhai happens to be the uncle of p.w. 2 Bhurabhai Dhulabhai. The appellant Pratapbhai is the son of appellant Gamjibhai Chandubhai. The appellant and the side of the complainant belong to Nayak community and are closely related. On March 8, 1993 there was a festival of Dhuleti. All the village people had assembled and were collecting money for the festival of Dhuleti. The appellant Gamjibhai asked for water from the sister-in-law of the complainant Bhurabhai. When the sister-in-law of the complainant gave water to appellant Gamjibhai, the appellant Gamjibhai splashed water on her face. There were heated exchange of words between Gamjibhai and deceased Dhulabhai Vechatbhai. At about 11.00 a.m., the appellant Gamjibhai had invited the complainant side for tea at his residence. The complainant Bhurabhai along with father Dhulabhai and

brothers Rameshbhai and Harishbhai had gone to the house of the appellant Gamjibhai. As soon as the complainant and his father and brothers reached the house of the appellant Gamjibhai, they were assaulted by the appellant Gamjibhai and his son appellant Pratapbhai. As per the case of the prosecution Pratapbhai Gamjibhai had inflicted a knife blow on Dhulabhai Vechatbhai. Thereafter, Pratapbhai had given a knife blow to one Prabhat Rama who also happened to be the uncle of the complainant Bhurabhai. Pratapbhai had also given knife blow to p.w. 5 Harishbhai Dhulabhai. The appellant Gamjibhai had given a blow with shovel on the head of deceased Dhulabhai. After inflicting the knife and shovel blows, both the appellants ran away from the place of the incident. Dhulabhai Vechatbhai who was seriously injured due to the knife blows and the blow with shovel succumbed to the injuries on the spot. Prabhat Rama who had come to the rescue of Dhulabhai Vechatbhai and Harishbhai and who was inflicted with knife blows by appellant Pratapbhai also succumbed to the injuries on the way to the hospital. P.W.5 Harishbhai was also seriously injured and was taken to Halol hospital where he was advised to be taken to S.S.G.Hospital, Vadodara. P.W.2 Bhurabhai Dhulabhai lodged F.I.R. at Pavagadh Outpost Police Station where it was registered as Halol Police Station I C.R. No. 70/93 for offences punishable under Sec. 302, 307, 504 read with Sec. 114 of the I.P.C. and under Sec. 135 of the Bombay Police Act. The investigation of I C.R. No. 70/93 was handed over to P.W. 10 P.S.I. K.R.Parmar. P.S.I. Parmar held inquest of the dead bodies of Dhulabhai Vechatbhai and Prabhat Rama and had sent both the dead bodies to Halol Government Hospital. P.W. 11 Dr.Chandresh R Bhatt who was at the relevant time discharging his duties as Medical Officer, Government Hospital Halol carried out the autopsy of the dead bodies of Prabhat Rama and Dhulabhai. P.S.I. Parmar went to the place of the incident and collected blood soiled earth and one stick which was smeared with blood. P.S.I.Parmar had recorded the statement of the witnesses. The appellant Pratapbhai had surrendered before the Vadodara police and therefore he was brought to Halol. The appellant Pratapbhai while he was in police custody, had shown his willingness to produce muddammal knife which he had used in causing injuries to deceased Dhulabhai, Prabhat Rama and witness Harishbhai Dhulabhai. Accordingly, the independent panchas were called and in their presence the muddammal knife which was hidden by the appellant Pratapbhai was recovered and the recovery panchanama was accordingly prepared. The appellant Gamjibhai was arrested on April 29, 1993 under arrest panchanama. The appellant

Gamjibhai had also shown his willingness to show the muddammal shovel which he had used in giving fatal blows on the head of deceased Dhulabhai. Accordingly, the said muddammal shovel was recovered by drawing panchanama under Sec. 27 of the Evidence Act. P.S.I. Parmar had sent the clothes recovered from the body of deceased Prabhat Rama and deceased Dhulabhai Vechatbhai to the Forensic Science Laboratory (to be referred to as F.S.L. for short) for analysis. P.S.I.Parmar had received the post-mortem notes of the dead body of the deceased Prabhat Rama and Dhulabhai Vechatbhai. On June 1, 1993 P.S.I.Parmar was transferred and the investigation of I C.R.No. 70/93 was handed over to P.S.I. Thakore. After the completion of the investigation of the above crime register, chargesheet came to be filed against the present two appellants in the Court of Judicial Magistrate, First Class Halol against the present appellants for offences under Sec. 302, 307, 504, 114 of the Indian Penal and Sec. 135 of the Bombay Police Act. As the offences under Sec. 302 and 307 of the Indian Penal Code were exclusively triable by the Court of Sessions, the learned Judicial Magistrate committed the case no. 876/93 to the Court of Sessions where it came to be numbered as Sessions Case no. 81/93.

4. The charge exh. 4 was framed against the appellants of both the appeals for offences under Sec. 302 read with Sec. 114 and under Sec. 307 of Indian Penal Code. The charge was read over and explained to the appellants where they pleaded not guilty and claimed to be tried. In order to prove the charges against the appellants, the prosecution examined the following witnesses : i) p.w. 1 Harisinh Rupsinh Solanki exh. 27, ii) p.w. 2 Bhurabhai Dhulabhai Nayak (complainant) exh. 29, iii) p.w. 3 Bhupatsing Nansing exh. 32, iv) p.w. 4 Natvarsing exh. 34 v) p.w 5 Harishbhai Dhulabhai (injured eye witness) exh. 35, vi) p.w. 6 Dadamben wd/o Prabhat Rama (eye witness) exh. 38, vii) p.w. 7 Head Constable Govindbhai Punjabhai, exh. 39, viii) p.w. 8 Vajesing Hemabhai exh. 40, ix) p.w. 9 P.S.I. Fatesing Somsing Mahida exh. 41, x) p.w. 10 P.S.I. A.R.Parmar (Investigation officer) exh. 42, xi) p.w. 11 Dr.C.R.Bhatt exh. 44 and xii) p.w. 12 Dr.S.M.Patel (Medical Officer S.S.G.Hospital, Vadodara) exh.51.

5. The prosecution produced the documentary evidence such as inquest panchanamas of two dead bodies, panchanamas of attaching clothes of the two deceased, panchanama of the place of the incident, medical certificate of injuries sustained by appellant Gamjibhai Chandubhai, report of F.S.L., report of serologist, map

of the place of the incident, recovery panchanama of muddammal knife and shovel, F.I.R. lodged by p.w. 2 Bhurabhai Dhulabhai, p.m.notes of the bodies of Dhulabhai Vechatbhai and Prabhat Rama, injury certificate of P.W.5 Harishbhai Dhulabhai etc. to prove the case of the prosecution.

6. Learned Addl.Sessions Judge on the appreciation of the evidence led by the prosecution and after hearing the arguments advanced by the prosecution as well as by the defence, held that deceased Dhulabhai Vechatbhai and Prabhat Rama died a homicidal death. It was held that appellant Pratapbhai Gamjibhai had inflicted fatal knife blows on deceased Dhulabhai Vechatbhai and on deceased Prabhat Rama. It was further held that the appellant Gamjibhai Chandubhai had inflicted fatal blow with muddammal shovel on the head of Dhulabhai Vechatbhai which had caused serious injuries such as fracture of skull. Learned Addl. Sessions Judge further held that appellant Pratapbhai had inflicted knife blows on the injured witness p.w. 5 Harishbhai and had committed offence under Sec. 307 of I.P.C. Learned Addl.Sessions Judge further held that both the appellants had aided and abetted each other in causing the murder of deceased Dhulabhai and therefore both the appellants were convicted under Sec. 302 read with Sec. 114 of I.P.C. Both the appellants were sentenced to undergo rigorous imprisonment for life and fine of Rs.100/- in default rigorous imprisonment for 10 days for offence under Sec. 302 read with Sec. 114 of I.P.C. The appellant Pratap was further convicted for offence under Sec. 307 of I.P.C. for causing serious injuries to p.w. 5 Harishbhai and sentenced to suffer rigorous imprisonment for 7 years and fine of Rs.500/- in default rigorous imprisonment for 2 months. Learned Addl.Sessions Judge ordered both the sentences to run concurrently which has given rise to filing of these two appeals by the appellants (original accused nos.1 & 2).

7. Learned advocate Ms.Banna Dutta for the appellants and learned A.P.P. Mr.A.J.Desai for the State of Gujarat has taken us through the entire record and proceedings of the appeal. Learned Advocate for the appellants has strenuously urged that the incident had taken place all of a sudden and from the facts and circumstances emerging it might have taken place as a result of grave and sudden provocation and therefore the appellants ought not to have been convicted under Sec. 302 of I.P.C. but instead they should have been convicted under Sec. 304 Part I or II of I.P.C. The counsel for the appellant further submitted that though

many persons had collected near the place of the incident, 20 independent witness was examined by the prosecution and only closely related witnesses were examined. Counsel further submitted that the recovery panchanama by which muddammal articles knife and shovel were recovered were not duly proved under Sec. 27 of the Indian Evidence Act. Counsel for the appellant has further submitted that the prosecution has not explained the injuries found on the head of the appellant Gamjibhai Chandubhai for which an adverse inference should be drawn against the prosecution. Counsel at the end submitted that this may be the case of free fight, for which the appellants cannot be convicted under Sec. 302 of I.P.C. and they should be convicted for lesser offences and accordingly the appeals be partly allowed.

8. Learned A.P.P. Mr.Desai on the other hand has submitted that the incident had taken place in broad day light. It is submitted that after the incident of splashing water by the appellant Gamjibhai Chandubhai on the face of the sister-in-law of complainant p.w. 2 Bhurabhai Dhulabhai with an oblique motive and with intention to beat the side of the complainant, the two appellants had invited them for tea at their place. It is submitted that as soon as the side of the complainant reached the house of the appellants, they were assaulted with knife and shovel and fatal injuries were inflicted by the two appellants with the respective weapons which they were carrying. Learned A.P.P. has submitted that the intention of the appellants was obviously to cause the murder of deceased Dhulabhai Vechatbhai. Learned A.P.P. has further submitted that the injuries inflicted by the appellants on vital part of the body of deceased Dhulabhai Vechatbhai and deceased Prabhat Rama prove that they had intention to cause murder. Learned A.P.P. has further submitted that the knife blows given on the body of p.w. 5 Harish was also to cause death of the same witness but fortunately he was saved by the timely medical assistance. It is therefore submitted by learned A.P.P. that action of causing injuries on p.w. 5 Harish was attempt to commit murder of the said witness and therefore the conviction of the appellant Pratap under Sec. 307 of I.P.C. should be maintained. At the end learned A.P.P. has submitted that the conviction and sentence imposed on the appellants was eminently just and proper and therefore both the appeals deserve to be dismissed.

9. It is not in dispute and rightly conceded by the learned counsel for the appellants that Dhulabhai Vechatbhai and Prabhat Rama died a homicidal death due to

injuries inflicted on vital parts of their bodies. Therefore, the finding of the learned Addl.Sessions Judge that deceased Dhulabhai Vechatbhai and Prabhat Rama died a homicidal death deserves to be confirmed.

10. The evidence of complainant p.w. 2 Bhurabhai Dhulabhai and p.w. 5 injured witness Harishbhai Dhulabhai proves beyond doubt that the appellant Pratapbhai Gamjibhai had given knife blow on the abdominal part of the body of Dhulabhai Vechatbhai. Exh. 46 p.m.notes of the body of the deceased Dhulabhai Vechatbhai mentions that the deceased had sustained fatal injuries by sharp cutting and penetrating instrument on chest (Rt.) side at level of 5th intercostal space on mid clavicular line 2 cm x 0.75 cm x deep in the thoracic cavity (wedge shaped). Dr. Bhatt had opined that above two sharp cutting injuries can be caused by muddammal knife and the injuries caused by the said sharp cutting instrument were in the ordinary course of nature sufficient to cause the death. Another injury which was found on the head of deceased Dhulabhai Vechatbhai which according to the oral evidence was caused by the muddammal shovel was also turned to be fatal. According to the P.M.notes, the injury caused with shovel and landed on head of deceased Dhulabhai on the right parietal region was of the size of 10cm long x 3cm broad which was bone deep underlying bone fracture. The said injury is also, in the opinion of Dr.Bhatt, sufficient in the ordinary course of nature to cause death. The appellant Pratapbhai Gamjibhai and the appellant Gamjibhai Chandubhai had selected vital parts of the body of deceased Dhulabhai for inflicting injuries. Both had acted in a most cruel manner and had inflicted blows with knife and shovel with all force with intention to cause the death of Dhulabhai Vechatbhai. The oral as well as the medical evidence as discussed above in our opinion, proved beyond doubt that the appellants had inflicted knife and shovel blows with an intention to cause the death of deceased Dhulabhai Vechatbhai. The finding of the learned Addl.Sessions Judge that the appellants Pratapbhai Gamjibhai and Gamjibhai Chandubhai by aiding and abetting each other had caused the death of Dhulabhai and thereby committed offences under Sec. 302 read with Sec. 114 I.P.C. is found to be eminently just and proper and therefore it deserves to be confirmed.

11. As the life of Dhulabhai Vechathai was in danger because of brutal attack by the appellants, Prabhat Rama came to their rescue. The evidence of p.w. 2 complainant Bhurabhai is corroborated by the oral evidence of p.w. 5 Harishbhai which also gets

corroboration from the evidence of eye witness Dadamben who happens to be the widow of Prabhat Rama proves beyond doubt that deceased Prabhat Rama was given knife blows by the appellant Pratapbhai. The P.M.notes of the dead body of Prabhat Rama is produced at exh. 45. As per the P.M.notes exh. 45, deceased has sustained one injury which was in the nature of sharp cutting penetrating wound on left side of abdomen longitudinal below left hypochonarium at level of umirilicers 8 cm long x 2 cm broad & deep into the abdomen, wedge shaped going upward and back in the abdomen omentum part come out from wound. External injuries as noted in column no. 17 were corresponding to internal injuries noted in column no. 19. As per the oral testimony of p.w. 11 Dr.Bhatt, the injuries found on the body of Prabhat Rama were possible by sharp cutting instrument just like muddammal knife. Dr.Bhatt particularly deposed that the injuries found on the dead body of Prabhat Rama were sufficient in the ordinary course of nature to cause his death. The oral evidence of P.W. 2 Bhurabhai Dhulabhai, p.w. 5 injured eye witness Harishbhai Dhulabhai and p.w. 16 Dadamben wd/o Prabhat Rama and the evidence of Medical Officer Dr.Bhatt proves beyond doubt that deceased Prabhat Rama succumbed to the injuries due to fatal blow given on his abdominal part of his body by the appellant Pratapbhai Gamjibhai. The nature of injuries sustained by deceased Prabhat Rama prove that appellant Pratap had selected a vital part of the body of the deceased and had inflicted with full force the knife blow on the vital part. The appellant Pratap had acted in a most cruel manner in giving knife blow with full force. The above set of evidence in our opinion, proves beyond doubt that the appellant Pratap Gamjibhai had an intention to cause the death of Prabhat Rama and therefore the death of deceased Prabhat Rama would fall squarely under Sec. 302 of I.P.C. The conviction of the appellant Pratapbhai for causing the murder of Prabhat Rama is also proved beyond doubt by the prosecution and therefore the conviction of appellant Pratapbhai Gamjibhai under Sec. 302 I.P.C. also deserves to be confirmed for causing the murder of Prabhat Rama.

12. The appellant Pratapbhai Gamjibhai is also convicted under Sec. 307 of I.P.C. for causing injury with knife to P.W. 5 Harishbhai Dhulabhai with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. The injuries caused with knife by the appellant Pratapbhai Gamjibhai on vital part of the body of P.W.5 Harish Dhulabhai was serious. The injury certificate issued of Harish Dhulabhai by S.S.G.Hospital, Vadodara

was produced at exh. 52 on the record of Sessions Case. Prior to the admission in the S.S.G.hospital, the injured was treated at Community Health Centre, Halol on March, 8, 1993. P.W.11 Dr.Bhatt who was at the relevant time serving as Medical Officer in the Community health Centre at Halol had examined injured Harish Dhulabhai on March 8, 1993 around 4.30 p.m. The evidence of the doctor discloses that incise wound was found of the size of 3 cm in length on abdominal part of the body of p.w. 5 Harishbhai. Due to the incise wound omentum and intestine had come out. Due to portruding of omentum and intestine the depth of the wound could not be measured. The doctor deposed that after giving primary treatment the patient was immediately shifted to S.S.G.hospital, Vadodara. P.W.5 injured Harishbhai Dhulabhai had remained as an indoor patient in the S.S.G.hospital, Vadodara from March 8, 1993 to March 24, 1993. The doctor who treated the injured at S.S.G.hospital, Vadodara namely Dr.S.M.Patel was examined at p.w 12 exh. 51. He deposed that because of the injuries caused on the small intestine operation was performed on the injured. It was further deposed that the big intestine was also damaged due to the stab injury and therefore another operation was also performed. He categorically deposed the injuries caused by the knife on the abdominal part of the injured Harish was of serious nature and if the patient was not given primary treatment, he could have succumbed to the injuries. The nature of the injuries as deposed by the two medical officers and the certificate issued by them corroborated with the oral testimony of the injured witness himself, we are of the view that the appellant Pratapbhai Gamjibhai had inflicted knife blow on the vital organs of the body of the injured witness which could have caused his death. In view of the above set of circumstances and the evidence led by the prosecution, we are of the view that the conviction of the appellant Pratapbhai Gamjibhai under Sec. 307 of I.P.C. for causing serious injuries (which would have caused the murder) of the injured witnesses is eminently just and proper. Consequently, the sentence imposed on the appellant Pratapbhai Gamjibhai of 7 years and fine of Rs. 500/- in default rigorous imprisonment for 2 months for offence under Sec. 307 of I.P.C. is also eminently just and proper and deserves to be confirmed.

13. As a result of the foregoing discussion, we do not find any merits in the two appeals filed by the appellants challenging their convictions under Sec. 302 read with Sec. 114 and under Sec. 307 of I.P.C. and the sentence imposed on them by the learned Addl.Sessions

Judge vide judgment and order dated May 3, 1994. We therefore, confirm the conviction and sentence imposed on each of the appellant. The order of the learned Addl.Sessions Judge of directing the sentences to run concurrently is hereby confirmed. Criminal appeal nos. 537/94 and 674/94 are dismissed. The muddammal be disposed as per the direction contained in the impugned judgment.

(M.H.KADRI, J)

(SHARAD D DAVE, J)

srilatha